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THE PLEA OF INSANITY.

Among all the diseases that afflict man during his short sojourn on earth, none are so truly painful and humiliating as those which attack the mind. The victims of dyspepsia or consumption, diseases which prey upon the great sources of physical life, may, by the proper and skillful use of medicine, be relieved if not cured. The mind is unimpaired,—they are, therefore, capable of enjoying every mental excitation of pleasure; they have most of the enjoyments of society, and the satisfaction of appreciating the kind ministrations of friends to their daily wants. But the wretched victim of insanity knows no friend, enjoys no social intercourse, feels no kindness. To him

> * * * * "hope never comes,
> That comes to all: but torture without end."

The law need not add its vindictive justice to punish his misfortunes.

The functions of automatic life, such as digestion, circulation, respiration, secretions, and excretions, may or may not be disturbed, but from these he derives no physical enjoyment. The affections are often totally alienated, the most sacred ties of nature are severed,

his attachments are converted into aversion, his love into hatred; the pious christian is turned into a drunken and abandoned felon; the modest female is seized with the feelings of a loose libertine; the tender mother, under the control of an ungovernable impulse, hurls her offspring to destruction. Some, naturally of a mild and pacific disposition appear during their attacks to be inspired by the demon of mischief, and have an irresistible and ferocious inclination to imbrue their hands in human blood: in gratifying this passion, they make no discrimination between friend and enemy, the nearest and dearest relative is most generally the victim, the offspring seeks to kill the author of its being, and the parent meditates the destruction of his child.

There are others, on the contrary, in whom the morbid action of the brain excites nothing but emotions of pleasure: every sense is charmed by the object of its choice—they live in an elysium of fancy, where grateful change and increasing delight bid defiance to the cares and sorrows of the world. Even these excite our pity and commiseration.

The plea of insanity may be raised as a defence to any crime, however great or however small; the same general principles governing in all cases. It would amuse the curious to know how many strange and eccentric phases the disease assumes,—from the propensity to steal and secrete nails, to the dangerous infatuation that seeks its gratification in blood,—but the limits of this article will not allow of digression. It is intended to confine this discussion solely to the case of homicide, because the defence of insanity is seldom pleaded in respect to smaller offences, inasmuch as the close confinement to which the offender, if found insane, might be subjected, and the disgrace of admitting the crime and tendering such a plea, would often be a heavier punishment than that which the law actually prescribes for the offence with which the prisoner may stand charged. Just and proper as the plea of insanity may be, when there is indisputable proof of the existence of the disease, and of the connection of the crime with it, yet, we should not extend our sympathy so far, as to listen to that mock philanthropy which would tenderly lay all heinous crimes to its door, allowing the felon to gratify his cherished revenge, and then play the fool with justice.

It is a presumption of law, founded upon the ordinary course of nature, that every man is of sane mind until the contrary be shown; if the plea of not guilty be interposed, the defendant need not disclose the fact that insanity is his defence until the prosecution have rested; but if present insanity be pleaded, that constitutes a preliminary issue, the onus of proof in both cases being upon the defendant. If insanity be once established—*unless it was accidental or temporary in its nature*, as when it is occasioned by the violence or is an attendant symptom of disease—it is presumed to continue until the contrary appear by evidence; an inquisition of lunacy may be given in evidence on the trial, for the purpose of showing that the person was insane when he committed the act.

In a case before Lord Kenyon, where the prisoner was insane but a few days before the commission of the act or offence charged, the jury were directed that, since the prisoner was insane but a short time before the commission of the act, that it was impossible that he should have recovered the use of reason in the meantime; for were they to require proof of insanity at the exact moment the act was committed, a defence would never be made out. Barculo, Justice, in a case before him, told the jury that the great mass of proof established him (the prisoner) to be as sane as usual, nearly up to the commission of the deed, and not excessively intoxicated; when did he become insane? was it at the moment of the act? the act itself cannot be taken as evidence; it must be proved otherwise. Can it be supposed, that during all the preliminary arrangements of nearly three days he was sane, and then become insane just at the time of firing the pistol?

If it be sufficiently proved that a madman hath the use of reason and the government of his faculties at particular intervals, the law presumes the offence to have been committed in one of those intervals; this presumption may be rebutted by contrary evidence. The fact that the prisoner has once been insane is competent evidence, and is entitled to great consideration. The subject of lucid intervals has undergone great change: the moon formerly was supposed to have great influence over the disease; so potent was this belief, that the keepers of the insane, without waiting for any increased

turbulence on the part of the patient, bound, chained, flogged and deprived him of food, as the changes of the moon were discovered by the almanac, but these, and numerous other absurd notions in regard to insanity, have passed away.

Insanity is always a difficult and perplexing question both for judge and jury, and they seek to relieve themselves in a measure from the responsibility of deciding, by receiving the opinion of medical men. Opinions are at all times a doubtful and dangerous sort of evidence, more particularly so in cases of this nature, where a presumptuous quack, ready to boast of his acquirements, and confident in proportion to his ignorance, may relieve the jury of all responsibility, and deprive an irresponsible man of his life. The jury may thus unconsciously be the mere tools of the witness, to support some visionary theory, or confirm some favorite notion. In the case of Freeman, tried in New York, the court allowed all witnesses, of whatever occupation or profession, to state their opinion in regard to his insanity, and in a late case in Ohio, the court held that, persons other than physicians, might state their opinions. It is doubtful whether ordinary medical practitioners have a greater capacity or skill in these cases than other men of observation and ordinary intelligence. It would seem to be just as proper to allow a witness to state the age of a person from his looks as to state sanity or insanity from acts; it partakes of guess work in both instances.

The jury are the proper and only legal tribunal to decide that question. Besides, if witnesses are to state their opinions, why have any rule of law establishing in what insanity consists? It has been observed that opinions are entertained upon all subjects that come before courts for adjudication, and if one man's opinion is evidence, which will reduce the deliberation of the jury from one of facts to a mere weighing of opinion, why is not the opinion of all men, evidence?—a proceeding which has not a semblance of an enlightened administration of justice. The jury are kept together to exclude all mere matters of opinion, so as to bring them to decide upon the merits.

Opinions are generally based upon the knowledge the witness has

of the workings of his own mind, and the more vague and general notion he may have of the workings of the minds of others, and his experience of the workings of what he considers insane minds. The question of insanity, however, is to be tried on the facts, as they relate to the prisoner himself, in his own grade of life and intelligence; he is to be compared with himself, and not with other men. One of the great characteristics of insanity, is an excessive turning of the mind to its own affairs; in an entire alienation of reason in reference to itself. The competency of these opinions are an admission of the weakness and dependence of the law; they render a jury trial a mere formality of justice, and expose the court to be imposed upon by the tricks and corruptions of any pretender. But however honest the witness may be, we should be careful not to incorporate with the laws of the land, different theories, for on the subject of insanity they have followed each other in rapid succession; the doctrines of one year would hang many an irresponsible being—the next, send back many real murderers upon society.

On the trial of Miller, in 1838, the prisoner's counsel, without objection on the part of the commonwealth, introduced O. S. Fowler, the celebrated phrenologist, as a witness; he described the prisoner as of the lymphatic temperament; and stated that, a person of this temperament was more apt to be deranged upon the animal passions, than upon the intellectual. He also, among other things, described the prisoner's phrenological developments, as they appeared to him, on an examination some days previous in the prisoner's cell, the organs of destructiveness, secretiveness, and acquisitiveness, were stated by Mr. Fowler to be immense—the head measuring about seven and one-half inches from ear to ear. The court, in giving instructions to the jury, remarked that, the science of phrenology, or rather cranioscopy, had not yet been brought to such a state of perfection and certainty as to be relied upon in a court of justice—small deviations in the skull from its perfect form, not absolutely denoting insanity. They appear to be too uncertain to be relied upon, without endangering the rights of individuals, and the more important interests of the public. It was the opinion of the court, that

the testimony of Mr. Fowler proved no such developments of the animal propensities as would of itself justify the belief of insanity in any of its forms. These witnesses come under the head of experts, and it is very proper to examine them as to their capacity to judge, and the degree of skill they possess; the witness must also state the facts and circumstances upon which his opinion proceeds. This is in some measure a protection to the court and jury. The opinion of witnesses who have long been conversant with insanity in its various forms, and have had the care and superintendence of insane persons, are received as competent evidence, even though they have not had an opportunity to examine the particular person, and observe the symptoms and indications of disease at the time of its supposed existence. Opinions delivered by men of scientific knowledge are the most unobjectionable, and yet, if the facts upon which their opinion is predicated are true, are not the jury bound to find according to the opinion? does it not, in fact, decide the case? Opinions are, however, guarded by many restrictions which serve as a check upon them, and prevent any great evil which might otherwise arise. Most medical jurists admit that individuals, not appearing to labor under any mental aberration, are liable to be seized with a sudden destructive impulse, under which they will destroy those to whom they are most fondly attached, or any person who may be involved in the subject of their delusion. Finite justice cannot reach such cases as these; the admission of acts as a proof of insanity, besides being contrary to the first rules of evidence, would break down all distinction between insanity and moral depravity. The same reason might also apply to a want of motive, which is a fact to be taken into consideration by the jury, and may tend, in connection with other facts, to establish a defence; because a motive cannot be proved, it does not follow that none exists. As far as the law is concerned, there need be no motive. It is not a necessary element of crime; it may be a step in its proof, but all the law demands is a design and intent to commit crime, the commission of it is presumptive proof of a malicious intent, therefore, the defence of insanity should strictly be confined to the rebutting of this presumption.

The whole life of the prisoner may be brought before the court; all acts and expressions may be reviewed,—even his pedigree may be traced out, to discover whether insanity be hereditary, the evidence of which is admissible upon the principle of human nature by which the propensities and infirmities of the parent are sometimes transmitted to their children, and pass from generation to generation. Delusion has been said to characterize the acts of the homicidal monomaniac, while premeditation, precaution and concealment, have been considered the essential features of the acts of the sane criminal. Premeditation and caution are met with in crimes committed by the insane, as well as in crimes committed by the sane, though these, with subsequent concealment, are certainly strong indications of sanity. Insanity is one of the very few cases in which the acts and declarations of the party are admissible in his favor, and all things that throw light upon or explain those acts, all the acts of others which may have influenced him in his friendship and his enmity, his promises and his threats; the looks are even evidence, these to a practiced eye might, in some cases, be very satisfactory evidence, the repetition of the same ideas, and the consequent repetition of the same movement of the muscles of the eye and face, give a peculiar expression, which is rarely to be mistaken. There is one fact which should receive particular consideration—that insane persons do not combine for effecting a common end; this is one of the most marked features of their malady. A single maniac may employ a great deal of cunning dissimulation, and is capable of carrying out a complicated and lengthened series of measures for accomplishing some purpose of his own, but when a combination is attempted, or a conference on some plan to be executed, there is no agreement; or, if there is an agreement on some united action, it is soon disclosed, the secret is soon betrayed; no jury could be made to believe that a man capable of combining with others to commit a crime in pursuance of a preconcerted plan, to be insane.

Flight, at common law, was considered so strong an indication of guilt, that in cases of treason and felony, it carried the forfeiture of the parties' goods and chattels, whether they were found guilty or acquitted. Flight is evidence of moral consciousness, declarations

indicative of intent, preparation for the commission of crime, and possession of its fruits, refusal to account for suspicious appearances, or unsatisfactory explanation of such appearances, and the destruction, suppression, or fabrication of evidence, are circumstances to be taken into consideration by the jury. Besides these means of detection, we are entitled to the benefit of the treasured knowledge of the science of medecine, the observation of the learned, who, rich with experience and study, have given to the jurisprudence of insanity the form and beauty of a consistent science; their experience proves hereditary transmission to be a fruitful source of this terrible disease; injuries to the brain by contusions are a very common cause, also drunkenness, excessive mental excitement, whether of joy or grief, fright, anger, religion, etc. Yet, withal, when the facts are spread before an uncultivated jury, there arises much difficulty in bringing them to apply scientific truth to the discovery of the fact of the existence of insanity. This difficulty must always occur when men are called upon to apply science to disputed facts, and gather therefrom the probable truth. These several causes have been divided into two distinct branches, viz: moral and physical causes, the changes of structure which take place in the brain, can be of no practical use to the legal inquirer, for they can only be proved upon a post mortem examination of it. Each particular case must be left to its own circumstances, and the jury, in considering it, should take into consideration all the facts which science has revealed, the errors which study and investigation have exposed, and the truths which experience has confirmed.

It was laid down by the fathers of the common law, as a test of responsibility, to govern all future time, that when a person hath ordinarily as great understanding as a child of fourteen years, he is such a person as may be guilty of treason or felony, or if he can distinguish right from wrong, or good from evil, he will be answerable for his criminal acts. This definition, if applicable at all, is only so in those cases where the strength and capacity of the mind is affected; right and wrong, good and evil, are terms which have nothing definite about them, they bear the same relation to each

other, as heat and cold, or east and west. No man, no number of men are capable of determining whether or not the prisoner knew he was committing a wrong, for he has no window in his forehead through which they can see the secret workings of thought and reason. The prisoner may know at the time he commits the offence that he is perpetrating a great wrong, that he is acting in direct contravention of the laws of the land, and will most certainly have their extreme punishment inflicted upon him. Fully conscious of the heinousness of the act and the infamy it will bring upon him, he deplores his misfortune, yet driven by an uncontrollable impulse, or pressed by some delusion, which the whole power of his reason is not able to combat, which rises paramount to the combined resistance of all his faculties, until at last, unable to appease the anarchy that reigns within him, he bows its submissive slave, and executes whatever its caprice may suggest. This rule of law was promulgated long before the disease had been studied, or its peculiarities noticed, and therefore, is of necessity, crude and untrustworthy. It has been proved to be erroneous. It was, however, adhered to during a great length of time on account of its just title to respect as a precedent, and the inability of the learned professions to furnish a better one; they could partially expose the error of this, but were unable to furnish a substitute. The want of progress in respect to the law of insanity is charged by Mr. Ray, upon the legal profession; he says: "In their zeal to uphold the wisdom of the past, from the fancied desecration of reformers and theorists, the ministers of the law seem to have forgotten that, in respect to this subject, the real dignity and respectability of their profession is better upheld, by yielding to the improvements of the times, and thankfully receiving the truth from whatever source it may come, than by turning away with blind obstinacy from everything that conflicts with long established maxims and decisions." The criticism is unjust, the courts have adopted all that medical professors are able to agree upon or demonstrate, and every attempt to engraft new theories have only added new difficulties to the perplexing question; besides, it is not the business of either lawyers or judges to make law, but to declare the law. On the remarkable case of Hadfield, in

the year 1800, for shooting at the king in Drury Lane Theatre, the prisoner was successfully defended by the eloquence of Erskine; this celebrated lawyer, upon that occasion, declared that delusion was the proper criterion, "the disease consisting in the delusive sources of thought, all their deductions within the scope of their malady, being founded upon the immovable assumption of matter, as realities either without any foundation whatever, or so distorted and disfigured by fancy, as to be nearly the same thing as their creations." Which is to say, that the insane reason rightly from wrong premises. This rule was adopted by the court, the rule was applicable to Erskine's client, who undoubtedly labored under a delusion, and would be perhaps a proper test in all other cases, were insanity confined to the intellectual faculties. This decision has been followed in several cases in this country.

In 1844, the English House of Lords propounded certain questions to the judges of the law courts, and their reply was meant, no doubt, to be considered as the law of the land, by which all future practice was to be governed. They say, that to render the party irresponsible "it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing wrong." It is utterly impossible to extract either from the English or American authorities any certain rule; the old rule, that insanity does not annul criminal responsibility in one who retains the power of distinguishing right from wrong, has been abandoned, then modified, subsequently re-affirmed, and then again abandoned. To this day the law lingers in doubt and uncertainty. The difficulty has arisen in a great measure by an attempt to find some definition that would apply to all cases. An inflexible rule can never be established, because insanity assumes as many different forms as there are different characters among men; the disease is not established by one symptom, but by the whole body of symptoms, and no two cases are ever alike. We can have no established table of equivalents, so that when we know the facts we can apply the rule and procure the same invariable result, like the student of

chemistry who watches the combinations of inorganic substances, and never fails to be instructed with the result. The subdivision of insanity into a multitude of divisions serves to perplex instead of aiding a court and jury in arriving at the truth.

The case of Rogers is cited by Mr. Greenleaf with approbation, as containing the correct rule of law; in that case, Chief Justice Shaw declared the rule to be, that "a man is not to be excused from responsibility if he has capacity and reason sufficient to enable him to distinguish between right and wrong, as to the particular act he is then doing, a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty. On the contrary, although he may be laboring under partial insanity, if he still understands the nature and character of his acts and its consequences, if he has a knowledge that it is wrong and criminal, and a mental power sufficient to apply that knowledge in his own case, and to know that if he does the act he will do wrong and receive punishment, such partial insanity is not sufficient to exempt him from responsibility for criminal acts. If then, it is proved to the satisfaction of the jury, that the mind of the accused was in a diseased and unsound state, the question will be, whether the disease existed to so high a degree, that for the time being it overwhelmed the reason, consciousness, and judgment, and whether the prisoner, in committing the homicide, acted from an irresistible and uncontrollable impulse; if so, then the act was not the act of a voluntary agent, but the involuntary act of the body, without the concurrence of a mind directing it." This case was sustained in this State, in the cases of Kline and Freeman, and undoubtedly is the clearest, most scientific exposition of the law that has emanated from any judge. In the case of Phelps, tried at the Albany Oyer and Terminer, in 1855, the learned judge, in defiance of all that has been said and written, thus instructed the jury: "Did the prisoner know what he was doing?

Was it his intent and purpose; had he it in his heart to take the life of his wife? Did he know this was wrong, and that he deserved to be punished for it? if so, he was guilty of murder." This brings us back to the doctrine of Lord Hale.

After a careful consideration of insanity, we think every one must arrive at the conclusion that no rule of law can ever be established which will exactly define the disease and form an infallible rule for the guidance of the jury, for every man is more or less insane as every man is more or less intelligent; and after all it is a question of degree, which must of necessity be left to a jury to determine, the same as any other question of fact. Science has done much. It has stripped from the plea of insanity many vulgar prejudices. It has shown in a great degree of what it consists, what organs are affected; it has shown that its cause is material and not supernatural, and that it must be dealt with according to the rules of justice and mercy.

Different countries have endeavored, by various statutory enactments, to define the extent of mental alienation that shall exempt criminals from responsibility; they are more diverse and indefinite than those rules which govern the common law. The statute of New York declares that, "no act done in a state of insanity shall be punished as an offence," not attempting to define in what insanity consists; the definition and elimination of the law is left to the courts.

V.

NOTE.—We by no means coincide with our correspondent, in all his views and suggestions, but present them to our readers as matters of general professional interest. We would also refer, for an elaborate discussion of the subject, to the latest and best treatise on Medical Jurisprudence, by Wharton and Stille, § 45, p. 35.

Eds. Am. L. Reg.